



Missouri Department of Natural Resources

Clean Water Commission Water Protection Program

Meeting Minutes

January 5, 2005

Missouri Clean Water Commission
January 5, 2005
Holiday Inn Select
Columbia, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
William A. Easley, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission

Mike Alesandrini, RCGA, St. Louis, Missouri
Robert Bacon, ERC, Jefferson City, Missouri
Frank A. Barnitz, Missouri House of Representatives, District 150
Stacia Bax, Department of Natural Resources, Jefferson City, Missouri
Bob Bromley, Empire District Electric Company, Asbury, Missouri
Robert Brundage, Newman, Comley & Ruth, Jefferson City, Missouri
John Carter, Doe Run Company, Viburnum, Missouri
Kerry Cordray, Department of Natural Resources, Jefferson City, Missouri
Ron Cowger, AGC Engineers, Liberty, Missouri
Bill Crockett, Martin Builders, Inc., Columbia, Missouri
Aimee Davenport, Department of Natural Resources, Jefferson City, Missouri
Chad Davis, Trenton Municipal Utilities, Trenton, Missouri
Paul Dickerson, Department of Natural Resources, Jefferson City, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Tim Duggan, Attorney General's Office, Jefferson City, Missouri
Ken Eftink, City of Ashland, Ashland, Missouri
Joe Engeln, Department of Natural Resources, Jefferson City, Missouri
Glen Ehrhardt, Martin Builders, Inc., Columbia, Missouri
Bryan Fawks, Department of Natural Resources, Jefferson City, Missouri
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri
Peter Goode, Department of Natural Resources, Jefferson City, Missouri
Mubarak Hamed, Department of Natural Resources, Jefferson City, Missouri
Bob Hentges, Missouri Public Utility Alliance, Jefferson City, Missouri
Kris Hilgedick, News Tribune, Jefferson City, Missouri
John Hoagland, Missouri Rural Water Assoc., Ashland, Missouri
Jim Hull, Department of Natural Resources, Jefferson City, Missouri
Cindy Kadlec, Joint Committee on Administrative Rules, Jefferson City, Missouri
Sallie Keeney, REGFORM, Jefferson City, Missouri
Duane Kelly, Independence, Missouri
David Kindelspire, Department of Natural Resources, Jefferson City, Missouri
Marlene Kirchner, Department of Natural Resources, Jefferson City, Missouri
J. C. Kuessner, Missouri House of Representatives, District 152

Richard Laux, Department of Natural Resources, Jefferson City, Missouri
John Lodderhose, St. Louis MSD, St. Louis, Missouri
Bill Martin, Martin Builders, Columbia, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Tina Montez, Empire District Electric Company, Joplin, Missouri
Susan Myers, Urban Areas Coalition, St. Louis, Missouri
Robert Numrich, Southern Boone County School District, Kansas City, Missouri
Sara Parker, Department of Natural Resources, Jefferson City, Missouri
Caitlyn Peel, St. Louis Home Builders Assoc., St. Louis, Missouri
Kristin Perrin, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Peter Price, Department of Natural Resources, Rolla, Missouri
Chris Rackers, City of Ashland, Jefferson City, Missouri
John Roe, Robertson Properties, Inc., Kansas City, Missouri
Elfego Sardis, Department of Natural Resources, Jefferson City, Missouri
Paul Schelich, Department of Natural Resources, Jefferson City, Missouri
Candy Schilling, Department of Natural Resources, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Elena Seon, Department of Natural Resources, Jefferson City, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Dan Sherburne, Missouri Coalition for the Environment, Jefferson City, Missouri
David Shorr, Lathrop & Gage, Jefferson City, Missouri
Cynthia Smith, Department of Natural Resources, Jefferson City, Missouri
Jeff Staae, Department of Natural Resources, Jefferson City, Missouri
Martha Steinkamp, EPA Region 7, Kansas City, Missouri
Terry Swinger, Missouri House of Representatives, District 162
David Taylor, Purcell and Fisher, Jefferson City, Missouri
Clark Thomas, Rural Development, Columbia, Missouri
George Thullesen, Empire District Electric Company, Joplin, Missouri
Scott Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Richard Tuttle, Alliance Water Resources, Columbia, Missouri
Boyd Tyree, Tyree Mobile Homes, Columbia, Missouri
Michael Warrick, Department of Natural Resources, Jefferson City, Missouri
Cindy Wolken, Department of Natural Resources, Jefferson City, Missouri
Betty Wyse, Department of Natural Resources, Jefferson City, Missouri
Robert Young, Pioneer Steakhouse, Gravois Mills, Missouri

Call to Order/Introductions

Chairman Herrmann called the meeting to order at approximately 9:05 a.m. and introduced Commissioners Easley, Kelly, Hauser, and Minton. Commissioner Perry was absent. Chairman Herrmann then introduced Director of Staff Jim Hull, Assistant Attorney General Tim Duggan, and Secretary Marlene Kirchner.

Chairman Herrmann also introduced Missouri State Representatives J. C. Kuessner, District 152; Frank Barnitz, District 150; and Terry Swinger, District 162.

Mr. Jim Hull introduced Ms. Sara Parker, Interim Director; Mr. Jeff Staake, Deputy Director; and Mr. Michael Warrick, Chief Counsel, all of the Department of Natural Resources.

Administrative Matters

Approval of November 3, 2004 Joint Meeting Minutes of the Safe Drinking Water Commission and Clean Water Commission

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

Commissioner Hauser made a motion to accept the November 3, 2004 joint meeting minutes. Commissioner Easley seconded the motion. Commissioners Easley, Hauser, and Chairman Herrmann voted yes. Commissioners Kelly and Minton abstained.

Approval of November 3, 2004 Clean Water Commission Meeting Minutes

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

Commissioner Hauser made a motion to accept the November 3, 2004 minutes. Commissioner Easley seconded the motion. Commissioners Hauser, Kelly, Easley and Chairman Herrmann voted yes. Commissioner Minton abstained.

Regulatory Impact Reports (RIR) on Proposed Changes to Water Quality Standards and Effluent Regulations

Mr. Scott B. Totten, Director of Water Protection and Soil Conservation Division, Department of Natural Resources, reported that under the Federal Clean Water Act, each state is authorized to establish its own water quality standards. Those standards must be accepted by the Environmental Protection Agency (EPA) to be at least as stringent as federally established requirements. Every three years the state must conduct an evaluation of its standards and submit any revisions to EPA for approval. In 1994 and 1996 Missouri performed these evaluations and submitted them to EPA. On September 8, 2000, EPA notified the state of its concerns with 22 items in Missouri's water quality standards. Since that time, the Water Protection Program has met with stakeholders and EPA to develop solutions to those 22 concerns. The Water Quality Coordinating Committee is an adhoc committee of the Water Protection Program. Many of those meetings were used as a forum to discuss specifics of the water quality standards and effluent regulations. Revisions to the water quality standards and effluent regulations have been drafted but not yet filed as proposed rules. A Use Attainability Analysis

(UAA) for human contact with Missouri water bodies and Stream Classification Guidelines have been developed.

In July 2003 the Coalition for the Environment filed a 60-day notice of intent to sue EPA, alleging that EPA did not properly perform its oversight of Missouri's water quality standards. In October 2003, the Coalition for the Environment filed a complaint with the US District Court of Western Missouri against the EPA Administrator for failure to follow federal law and regulations related to the oversight of Missouri's water quality standards. The basis for these actions was a list of concerns included in EPA's September 2000 letter. Over the last 14 months the department has worked closely with EPA in establishing a timeframe for water quality standard promulgation so that this lawsuit could be settled. That schedule is being followed but with additional steps that took effect August 28, 2004.

The Missouri General Assembly approved requirements for an RIR last session. Regulations proposed after August 28, 2004 are required to have an RIR prepared and offered for public comment, then filed with the Joint Committee on Administrative Rules at the same time the proposed rules are sent to the Secretary of State for publishing. This report was placed on public notice October 16, 2004 for the water quality standards and effluent limit regulations for 60 days. The public comment period ended on December 16, 2004.

The department has learned that EPA and the Coalition for the Environment had reached an agreement. The department has asked that EPA provide an overview of the consent judgement and settlement agreement.

Ms. Martha Steinkamp, EPA Region 7, gave the overview by conference call. On December 27, a federal judge signed EPA's consent decree. They also entered into a settlement agreement with the Missouri Coalition for the Environment. It is not filed with the federal court. The purpose of this settlement agreement was to facilitate being able to get a consent decree. EPA did not agree that they had a mandatory duty to adopt federal regulations on certain items that were covered in their September 8, 2000 letter. They decided to agree that they would do certain acts in the settlement agreement in order to facilitate getting the consent decree.

The consent decree covers those items in the September 8, 2000 letter, which they had a mandatory duty to promulgate if the state of Missouri did not respond to that letter. The settlement agreement covers seven other items and it requires that by a certain date, EPA will make a determination of whether water quality standards need to be revised or changed. That determination will give notice to the plaintiff, and they have also agreed to give notice to the interveners in that litigation. That is EPA's only obligation under the settlement agreement. Both documents are schedules.

By the date when Missouri submits its water quality standards, EPA must approve or disapprove them. If they approve them, by the date in the consent decree, they have

satisfied the obligation for everything in the consent decree, if they disapprove them, the duties to promulgate kicks in. It's called a backstop.

On the settlement agreement, EPA's only obligation is to make that determination if Missouri does not submit revised water quality standards. If we do submit revised water quality standards, that ends the obligation under the settlement agreement. The regular statutory process kicks in at that point. EPA has a review obligation. They will either approve or disapprove those rules. If they approve them, then everything is in effect at the state level, if they disapprove them, they start the process again whereby Missouri must respond to the disapproval and revise their water quality standards.

Mr. Totten stated the department proposes to go forward with a rule revision that would address all 13 items. They are in one set of regulations, Missouri's water quality standards. He clarified with Ms. Steinkamp that of the first 7 items, EPA has to make a determination on those whether they meet the test by April 30, 2006. If the revisions meet the test, then EPA has satisfied the consent decree. Ms. Steinkamp replied that is correct.

Mr. Totten stated that of the additional six items, which includes the designation of whole body contact use, EPA has until April 30, 2007 for that review. Ms. Steinkamp replied that April 2007 is for the antidegradation procedures. April 2006 is for the additional six items, including whole body contact.

Mr. Totten clarified that this means that EPA must be prepared to promulgate water quality standards for the state of Missouri if the department has not got those to EPA in time so they can make a determination by April 30, 2006. Ms. Steinkamp replied that is correct.

Ms. Steinkamp commented that EPA is in the process of coming up with the absolute last date that EPA will be able to receive the regulations and be able approve them in order to not have to start working on the promulgation package. If EPA finds the regulations deficient, promulgation activities will happen at the national level and involves other agencies. EPA has 60 days to review the regulations. It should not take 60 days however because EPA has been working with the department and reviewing information and discussing proposals. Once the regulations are formally submitted, it would not be the first time EPA has seen them. Submitting the regulations to EPA by March 1, 2006 would provide a 60-day window for EPA to make a determination.

Mr. Totten stated that the 60-day comment period for the RIRs ended on December 16, 2004. The Water Protection Program has worked on responses to the comments received.

Chairman Herrmann stated that the stakeholders and department staff get together and iron out deficiencies. Staff needs to produce an RIR and water quality standards that are acceptable to EPA. There is time to do that and do it properly.

Mr. Totten reported that there is a Water Quality Coordinating Committee meeting scheduled for January 18, 2005. The RIR is scheduled for discussion. Anyone can be involved in the process. After meeting with the stakeholders to iron out differences, staff will come back to the Commission at their March meeting. With the Commission's approval, staff will file a proposed rule with a revised final RIR on March 15. This will be plenty of time to meet EPA's deadline.

Commissioner Hauser asked since the whole body contact is in the settlement agreement, is there time to pull that out of the rulemaking package, conduct additional UAAs and then submit rulemaking for whole body contact with UAAs at a later date?

Ms. Steinkamp replied the whole body contact determination, if there is not a rule that is approvable, will have to be made in April 2006 even though it's part of the settlement agreement and not the consent decree.

Mr. Hull stated the main purpose of the January 18 meeting is to work through the RIR. There are some comments that were received that tie back into the rulemaking. They will also be discussed. There will be a public comment period as part of the rulemaking process.

Mr. Totten stated staffs' response to the comment letters will come out prior to the March Commission meeting.

Drinking Water Use Classifications

Mr. Phil Schroeder, Chief of Water Quality Monitoring and Assessment, Department of Natural Resources reviewed a list of waters in Missouri that are identified by either the water quality standards or the Public Drinking Water Branch as drinking water sources. This list has not been evaluated for accuracy.

There are three different categories in the survey. 1) Water is listed in the standards as a drinking water source but does not appear in the Public Drinking Water Branch list. 2) Water is listed in the standards as a drinking water source but appears in the Public Drinking Water Branch list as "inactive." 3) Water is listed in the Public Drinking Water Branch list as active but the water does not appear in the standards. There are approximately 100 waters that fit into one of the three categories needing further evaluation.

The department will need to evaluate the status of the various drinking water sources and, for those that are "inactive," determine the effective date of their use termination. Staff did not anticipate that this analysis was going to be completed in time to effect the rulemaking process that is already initiated. They will work toward bringing the list to accuracy and bring it back to the Commission for the next rulemaking process.

Chairman Herrmann expressed concern about waiting to make the changes and why can't they be made now.

Jim Hull stated he is hesitant to say that the changes can be made in the proposed rule. If staff can they will. If they can make the changes before the rule is finalized and filed with the final rule they will.

Chairman Herrmann asked if the department still has to do a UAA?

Phil Schroeder commented any waters designated currently in the water quality standards for a use, in order to remove that use, staff will need to go through a UAA process.

Fall 2004 State Revolving Fund (SRF) Closing Update

Ms. Betty Wyse, Director of the Financial Assistance Center, Department of Natural Resources reported on the 2004C Bond Issuance. The 2004C fall closing occurred on December 9, 2004. There were nine participants taking a total of \$39,895,000. Of that, \$30,175,000 was for clean water projects. The effective rate for participants was at 2.05 percent after their subsidy.

Fifty-eight new clean water applications were received. The deadline was November 15, 2004. There was a total request for \$287.3 million. The number of applications may be inflated because applicants were asked to apply if they were interested in grant funds as well as loans. The sale of additional state bonds was being considered at the time. If a bond sale should occur, staff would be prepared to deliver funds as soon as they were available. Communities were made aware of this so there were no false assumptions.

There is a new accounting unit chief in the Financial Assistance Center. Ms. Jo Ann Shaw began her duties on December 1, 2004.

Ms. Wyse reviewed the estimated Clean Water SRFs that became available on December 14, 2004. The estimated amount of available funds for reserve is \$88.8 million. The estimated amount of available funds for projects is \$126.8 million.

The Financial Assistance Center is continuing to explore the possibility of making loans for Brownfield cleanups. They are actively working on onsite projects exploring what may be done with Jefferson County and a couple of other areas. They are working with the Department of Agriculture to expand the types of loans that Agriculture makes for waste management. Agriculture makes loans to individuals from SRF Funding for animal waste management systems. There is a draft loan program for small communities for developing their facility plans.

2005 Intended Use Plan (IUP) Bypass Recommendation – Mr. Doug Garrett, Financial Assistance Center, Department of Natural Resources reported each year it is brought before the Commission to request bypass of those communities that were contained in the current IUP as carry over fundable projects. The projects being recommended for bypass

are those that will not be able to make the last closing during the fiscal year that the IUP is intended for. The applicants that will not be in a position to close this spring are LaPlata, Linn, Seneca and the Missouri Prairie Foundation. LaPlata, Linn and Seneca have all reapplied. They will be placed on the FY06 IUP. The department asks for the Commission's approval for the bypassing of these projects.

Chairman Herrmann entertained a motion relative to the staff recommendation.

Commissioner Easley made a motion to approve the 2005 IUP bypass recommendation. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

2005 IUP Funding Recommendation

Mr. Doug Garrett reported that staff evaluates the projects and looks at the funds available to see who can be placed on the current IUP fundable list. The projects that are on the current fundable list will then be shown on a carry over fundable list on the next IUP.

Battlefield, Eldon, Indian Point, Stoddard County PSD #1, and Wentzville have all met the criteria to be placed on a fundable list. Each of these applicants have passed bond issues and submitted a facility plan for review in accordance with the FY05 IUP. The City of Eldon and Village of Indian Point have expressed a desire to participate in the spring closing. Placing the other applicants on the fundable list at this time would ensure funding on the FY06 IUP as carryover projects. The department asks for the Commission's approval of this recommendation.

Chairman Herrmann entertained a motion relative to the staff recommendation.

Commissioner Hauser made a motion to approve the 2005 IUP Funding Recommendation. Commissioner Kelly seconded the motion. Commissioners Kelly, Easley, Hauser and Chairman Herrmann voted yes. Commissioner Minton abstained.

Combined Sewer Overflow (CSO) Stakeholders Update

Mr. Phil Schroeder reported that at an earlier Commission meeting, the Commission directed staff to begin looking at a change in the rules with respect to how they address CSOs. As part of that directive the Commission had asked staff to develop a stakeholder group by the end of 2004, and by the end of 2005 have a draft revision to the rule that's ready for filing with the Secretary of State's Office.

An email invitation was submitted to various people who they thought might have an interest in this effort. The invitation stated the department would like to develop a stakeholder group.

The first meeting of the CSO Workgroup was scheduled to follow the January 18 Water Quality Coordinating Committee meeting.

Mr. Hull stated that the January 18 meeting will be converted to discuss the RIR and the proposed water quality standard rule revisions. Another meeting date for the CSO Workgroup will be determined.

FY05 319 Request for Proposals (RFP)

Ms. Becky Shannon, Watershed Protection, Department of Natural Resources reported that at the November Commission meeting, the department presented to the Commission RFPs for the projects that address nonpoint source water pollution to be funded with 319 money for FY05. This is federal funding that comes from EPA and is administered by the department.

Since the November meeting there has been some slight changes to the RFPs. Staff anticipates distributing the RFPs within the next week. The primary changes were that they added language to indicate that not all funding received is distributed through the RFP process. They added some specific due dates and made some minor edits and corrected some typographical errors.

There will be some press releases on the availability of funds and the placement of the RFPs on the department's web site, along with the application form.

Ms. Shannon mentioned that staff has received information from EPA about the amount of funding that will be available. There is a substantial reduction. Missouri will be losing about \$700,000 as compared to FY04 because of reductions in the federal budget for 319 money.

Empire District Variance

Mr. Richard Laux, Permits and Engineering, Department of Natural Resources reported that on September 17, 2004 a variance application and fee were received from Empire District Electric Company regarding the Asbury Power Plant in Jasper County. They are seeking relief from 10 CSR 20-7.031 (4) (L) (1) which establishes the states water quality standards for "Sulfate plus Chlorides" for streams in Missouri. The applicant operates a coal-fired power plant and discharges of sulfate from the existing ash pond system exceed the permit effluent limitations that are based on the referenced rule. The applicant is requesting until April 21, 2010 to comply with the existing limitations.

Staff recommends the Commission grant preliminary approval of this request with the following conditions: The permit for this facility should be modified to allow discharges in excess of the existing limitations during the interim period, but restrict such discharges based on minimum flow in the receiving stream. This will require the permittee to be able to measure flows in Blackberry Creek. The applicant shall report their progress towards achieving compliance, or development of a site specific water quality standard

within 24 and 48 months of the approval of the variance if the Commission grants the variance.

Staff recommends the variance be approved for only a period of time to correspond with the existing permit period.

Staff would public notice the preliminary approval if granted and brief the Commission on any comments received prior to asking for final action.

Chairman Herrmann entertained a motion relative to staff's recommendation.

Commissioner Hauser made a motion to accept staff's recommendation. Commissioner Kelly seconded the motion. All Commissioner's and Chairman Herrmann voted yes.

Enforcement

Stanley Subdivision

Mr. Kevin Mohammadi, Compliance and Enforcement, Department of Natural Resources reported that Stanley Subdivision consists of one duplex and two single-family homes located in Boone County. Wastewater from the residences are treated via single cell lagoon and effluent discharges pursuant to Missouri State Operating Permit number MO-0105996 to an unnamed tributary to Little Bonne Femme Creek. A portion of the lagoon is located on property owned by Mr. Windell Tyree and the remaining portion of the lagoon is located on property owned by Mr. Dan Stanley. The operating permit for this system expired on February 17 2004, and due to the lack of an approved continuing authority and the lagoons' failure to comply with the Missouri Clean Water Law and its implementing regulation, the department cannot renew the operating permit.

To date the lagoon has not been closed and the residences connected to this lagoon continue to use the lagoon. Due to the property owners' failure to resolve the violations of the Missouri Clean Water Law, the department is recommending referral of this matter to the Office of the Attorney General (AGO) for appropriate legal action to compel compliance and assess penalties.

Chairman Herrmann entertained a motion relative to staff's recommendation.

Commissioner Hauser made a motion to accept staff's recommendation. Commissioner Minton seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Linnie Smith, Stoneridge Subdivision

Mr. Mohammadi reported that Ms. Linnie Smith owns property platted for 30 residential lots known as the Stoneridge Subdivision located in Henry County. Currently there are

19 occupied homes, 5 more constructed and for sale, and 1 under construction. On December 30, 1996 the department issued Construction Permit Number 21-6900 to Ms. Smith for the construction of a recirculating sand filter and all necessary appurtenances to serve as a complete and usable sewer and wastewater treatment facility.

A collection and treatment system were constructed at some point after the construction permit was issued, however the department has not received an engineer's certification of work completed or an application for a Missouri State Operating Permit. Ms. Smith was issued two Notices of Violation in 2004, and due to her failure to correct the violations, the department's Kansas City Regional Office referred this matter to the Water Protection Program for further enforcement.

Due to Ms. Smith's and her son Mr. Rex Smith's failure to respond to the department's attempts to resolve this matter through an out-of-court settlement, staff are recommending referral of this matter to the AGO for appropriate legal action.

Commissioner Minton made a motion to refer the matter to the AGO. Commissioner Hauser seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Briarwood Oaks Estates

Mr. Mohammadi reported that Briarwood Oaks Estates, phase 3, is a new single family home subdivision consisting of 31 acres and under development in Blue Springs, Jackson County. It is owned and operated by Timber Oaks Development Co., Inc. The nearest receiving stream is an unnamed tributary to Lake Tapawingo.

The department has issued three Notices of Violation to Mr. Paul Gimmarro for violations observed by department staff. Mr. Gimmarro failed to correct the violations and the matter was referred to the Water Protection Program for enforcement action. The Enforcement Section has sent four letters to Mr. Gimmarro offering to resolve the violations occurring at this development and to date Mr. Gimmarro has failed to respond to any of the department's requests. Due to Mr. Gimmarro's failure to respond to the department's requests, staff will recommend referral of this matter to the AGO for appropriate legal action to compel compliance.

Commissioner Minton made a motion to accept staff's recommendation. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Robertson Properties, Inc.

Mr. Mohammadi reported that Robertson Properties is developing property for residential purposes known as the Clay Woods/Clay Meadows Subdivision located in Clay County, Missouri. The subdivision is comprised of 113 acres of which 75 acres are to be disturbed. Robertson Properties is also developing an adjacent property for residential purposes known as the Clay Meadows South 2nd Plat also located in Clay County. The

2nd Plat is comprised of 23 acres of which 18 acres are to be disturbed. Stormwater runoff from both sites discharge to an unnamed tributary of Town Branch.

On December 9, 2003, Robertson Properties entered into a Settlement Agreement with the department and the AGO to resolve past violations of the Missouri Clean Water Law and its implementing regulation at the subdivision. Since entering into this agreement the department has issued Robertson Properties three Notices of Violation for ongoing violations of the Missouri Clean Water Law and its implementing regulation at the subdivision and 2nd Plat.

Due to ongoing violations, the AGO, at the department's request, sent a letter dated June 28, 2004 to the attorney representing Robertson Properties demanding stipulated penalties for violating the terms of the December 9, 2003, Settlement Agreement and an immediate return to compliance. On July 14, 2004, the AGO received a response countering the department's position that Robertson Properties violated the terms of the Settlement Agreement and requested that the demand be rescinded. On November 1, 2004, the AGO received a response from Robertson Properties offering to pay civil penalties as part of a new Settlement Agreement for the past violations. The offer submitted for department consideration was unreasonable and unacceptable. Robertson Properties entered into a Settlement Agreement with the department for past violations, continues to be in violation of the Missouri Clean Water Law and its implementing regulation at its properties, and has failed to pay the demanded stipulated penalty. The Water Protection Program staff recommends referral of this matter to the AGO for appropriate legal action to compel compliance and assess penalties.

Mr. John W. Roe, Attorney with Roe and Epstein, representing Robertson Properties, Inc., spoke in opposition to the request for referral to the AGO. He explained his client is committed to getting the issue resolved. Mr. Roe asked the Commission to deny the referral and instruct the department to negotiate with them so the issue could be resolved.

There was much debate between Mr. Mohammadi and Mr. Roe. Mr. Tim Duggan of the AGO stated it is not the role of the Commission to determine violations.

Commissioner Easley made a motion to give Robertson Properties an additional 30 days to negotiate with the department. If an agreement is not made, have the matter brought back to the Commission in March.

Mr. Hull commented not to lose sight of why they are going through this in the first place. The department is looking to achieve compliance so there is not a harm posed to the environment. Mr. Hull encouraged the subdivision to obtain compliance. The department will sit down with Robertson Properties and attempt to negotiate in good faith as the Commission has directed. If a settlement is not made, it will be brought back to the Commission in March.

Commissioner Hauser seconded Commissioner Easley's motion. Commissioners Hauser, Kelly, Easley and Chairman Herrmann voted yes. Commissioner Minton had stepped out of the room.

Legal

Pioneer Steakhouse and Saloon Appeal

The Commission took up the recommended decision prepared by the Hearing Officer. Mr. Robert Young, on behalf of Pioneer Steakhouse, and Ms. Shelley A. Woods, Assistant Attorney General, on behalf of the Department, presented arguments concerning whether the Commission should adopt the recommendation. After hearing arguments, and upon the advice of Mr. Tim Duggan, the Commission deferred further action until the meeting in March, upon assurance from Ms. Woods that she will inform Mr. Bill Bryan, of the AGO, that the Commission would like him to prepare a revised draft decision that includes her suggested language changes.

A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

Presentations

Surface Water Runoff, Pollution and Erosion Issues Associated with Development in the City of Ashland, Missouri

Mr. David Taylor, an attorney representing Mr. and Mrs. Marvin Purcell and Mr. and Mrs. Gary Fisher, gave an overview of the consequences the citizens of Ashland are suffering from a development in that city. The Purcells and Fishers filed suit in the Circuit Court of Boone County Missouri regarding erosion damage to their properties caused by water runoff relating to increased construction in the Ashland area.

Mr. Purcell and his son determined that there has been a loss of 61,330.24 cubic yards of soil during the past ten years. The estimated damage to the soil is about \$885,000. The development in Ashland occurred without proper storm-water controls. The runoff from the development affects Bass Creek, which is a protected stream.

Mr. Taylor asked the Commission to bring the Department of Natural Resources into the lawsuit as an additional plaintiff because the attorney for one of the defendants, Martin Builders, Inc., has stated that he believes the department is a necessary party to the litigation. Mr. Taylor requested the Commission to seek guidance from the department and the AGO and tell the Commission what the state needs to do in reference to this problem.

Mr. Glen Ehrhardt, Attorney for Martin Builders, Inc., Mr. Robert Numrich, Attorney for the Southern Boone County School District, Mr. Bill Crockett, P.E., Consultant for

Martin Builders, Inc., and Mr. Chris Rackers, Attorney for the City of Ashland, all spoke regarding this issue.

Commissioner Minton made a motion that the Commission not get involved in this lawsuit involving these individuals. Let the courts system play its course. At such time the Commission would be named as a defendant would be the only time the Commission would respond.

Commissioner Minton went on to say if staff believes there is a violation concerning the construction and operating permits, he suggests they investigate.

Commissioner Hauser seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Standing Items

Other

Mr. Hull reported that a Mr. Welty had approached the Commission in the past. He had concerns with a neighbor affecting his wetlands. He wanted the Commission to get involved in the matter. Mr. Bill Bryan, Commission Counsel, AGO advised the Commission that he did not believe they needed to enter into this matter.

Mr. Welty came before the Commission again and provided additional information that he wanted Mr. Bryan to look at under the Commission's direction and report back to him if that additional information made a difference in his recommendation.

Mr. Bryan was not able to be present for this meeting and asked Mr. Hull to inform the Commission that he reviewed Mr. Welty's additional information and saw no reason to change his recommendation. That will be conveyed to Mr. Welty.

The department was under a corrective action plan by EPA Region 7 to address some deficiencies in data management when it came to the SRF program. The department spent over \$1 million correcting the deficiencies. The new system is up and running now and EPA has officially sent the department a letter saying they have been removed from corrective action.

The Water Classification Guidelines, Appeal Procedures for the Clean Water Commission to the Administrative Hearing Commission, a presentation by Mr. Robert Brundage, and the permitting update were all originally on this meeting agenda. These items will be brought back to the March meeting. These items had to be removed due to the length of this meeting agenda.

Future Meetings

The next meeting of the Clean Water Commission will be on March 2, 2005 in Hannibal, Missouri. There is a meeting scheduled for May 4, 2005 but a location has not been

determined yet. Mr. Hull recommended having the May meeting in Jefferson City since it will be close to the end of the legislative session. Department staff needs to be available during that period of time.

Commissioner Hauser made a motion to hold the May 4, 2005 meeting in Jefferson City. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Respectfully Submitted,

Jim Hull
Director of Staff